

THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 29th June, 2006

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W.P.No.19515 of 2005

Between:

M. Hare Ram

... Petitioner

and

The General Manager,
District Cooperative Central Bank Ltd.,
Khammam, Khammam district
and 4 others

... Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.19515 of 2005

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records resulting in issuance of Form No.4/List of attachment issued under Rule 52(5) of the A.P. Cooperative Societies Rules in E.P.No.267/2005-06 by the 3rd respondent on 3-8-2005 in accordance with the Demand Notice/Order of attachment and to set aside the same and also to direct the respondents to redeliver the Eicher Premium 369 bearing No.AP20G 3542 in its original condition to the petitioner.

Under the impugned Order, the Tractor - Eicher Premium 369 bearing registration No.AP20G 3542 was attached. The admitted facts are that the tractor was purchased by the late father of the petitioner – Radha Krishna Murthy – from the loans advanced by the 5th respondent-society. After the death of Radha Krishna Murthy, the Society passed a resolution transferring the loan account in the name of his wife – Smt.Mushti Annapurnamma. Thereafter, when the instalments were not paid, the mother of the petitioner was issued with a notice. The same was received by one of the brothers of the petitioner. Further an amount of Rs.15,000/- was paid by him on 11-7-2005. Now, the claim of the petitioner is that the loan account ought not to have been transferred in the name of their mother-Smt.Annapurnamma. After the death of their father, himself and his brother have succeeded to the estate of their father including the tractor in question. Therefore, they alone are liable for all the consequences and no notice of any kind is issued to him; as such, the attachment of the Tractor under the impugned notice is bad in law, apart from the fact that the Tractor being an agricultural implement cannot be attached.

The admitted facts would clearly show that the mother and another brother of the petitioner are aware of the proceedings initiated

by the respondents. In fact, though the mother has not participated, another brother, who received the notice, went to the respondent-society and deposited an amount of Rs.15,000/- on 1-7-2005 and requested further time of 15 days to repay the entire loan amount. When such an amount was not paid, the present proceedings are initiated. Now the petitioner claimed that himself and his brothers became owners of the Tractor after death of their father, but he had no notice of any kind and he is not aware of any proceedings initiated by the respondents. Absolutely, there is no truth in this statement. One brother tried to persuade the society in seeking time and in fact, paid some amount and further, he failed to pay any amount, and another brother comes up before this Court and rakes up the issue.

It is also argued by the learned counsel for the petitioner that under Article 300-A of the Constitution of India a person cannot be deprived of his property, without recourse to due process of law. It is unfortunate that such a stand was taken by the petitioner. The loan taken from the society by the father of the petitioner is not in dispute. It is also not in dispute that the Tractor is hypothecated to the society and the mother and brother of the petitioner are served with notices. Insofar as the submission of learned counsel for the petitioner that the Tractor being an agricultural implement it cannot be attached is concerned, it is now well settled that the tractor also can be attached for the purpose of recovery of loan amount advanced by the society. Under these circumstances, the Writ Petition is misconceived and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

29-6-2006

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